THE HIGH COURT OF TRIPURA
AGARTALA

RSA NO.55 OF 2003

1. The State of Tripura,
(represented by the Secretary,
Department of Education,
Government of Tripura,
Agartala, West Tripura).

2. The Director of School Education,
Government of Tripura,
Agartala, West Tripura.

3. The Inspector of School,
Dharmanagar, North Tripura.

……. *Defendant-Appellants*

- Vs –

Shri Bhanu Kumar Chanda,
S/O Late Girish Chanda,
Assistant Teacher,
Joynagar High School,
Joynagar, Sanicherra,
P.O. Churaibari, Dharmanagar,
District-North Tripura.

…….. *Plaintiff- Respondent*

BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS

For the appellants	**:**	Mr. S. Chakraborty, Addl. G.A.
For the respondent	**:**	Mr. D.K. Biswas, Advocate Mr. N. Roy, Advocate, Mr. S. Lodh, Advocate.
Date of hearing	**:**	**05.08.2013**
Date of delivery of Judgment & order	**:**	**08.08.2013**

JUDGMENT & ORDER

This second appeal has been admitted for hearing on the following substantial question of law:

"*Whether the appellate Court is erred in law in holding that the Director of School Education has no power to treat the period of suspension of the appellant as non-duty and to with-hold his pay and allowances without drawing up the departmental proceeding against the respondent in violation of the principle of natural justice?"*

2. Heard learned Addl. G.A., Mr. S. Chakraborty for the defendant-appellants and learned counsel, Mr. D.K. Biswas for the plaintiff-respondent.

3. The plaintiff-respondent, while was serving as an Assistant Teacher under the Directorate of School Education, Government of Tripura, got involved in a criminal offence punishable under Section 302 read with Section 34 of IPC and in connection with that criminal case he was arrested and taken to custody and while he was under custody for more than 48(forty eight) hours, the disciplinary authority, i.e. the respondent No.2 by an order dated 21.09.1981 placed him under suspension *w.e.f.* 04.09.1981.

3.1. The criminal case was charge-sheeted and was tried in the Court of Sessions Judge, North Tripura, Kailashahar in Case No.28(NT/D) of 1982 and the learned Sessions Judge found the plaintiff-respondent guilty of committing offence punishable under Section 302 read with Section 34 of IPC and sentenced him by judgment and order dated 14.12.1983.

3.2. The plaintiff-respondent preferred an appeal being Criminal Appeal No.5 of 1984 before the Gauhati High Court, Agartala Bench and the High Court by judgment and order dated 21.09.1993 found the plaintiff guilty of committing offence punishable under Section 323 of IPC but released him on probation. The operative part of the judgment passed by the High Court reads thus—

> "*…… Situated thus, we alter the conviction of the learned Sessions Judge and convict the accused Bhanu under section 323 IPC. As the other accused appellant Bidyut is dead, it is not necessary to consider his involvement in the crime.*
>
> *Now the question is regarding sentence. The occurrence took place more than 11 years back and it will not be just and proper in the interest of justice to ask the accused-appellant Bhanu to go back behind the bar. Therefore, sentence already undergone would be sufficient and just. We have also considered the question of fine and in our opinion, instead of imposing any fine for the present, we proposed to invoke the provisions of the Probation of Offenders Act, 1958. The accused appellant Bhanu shall execute a bond for good behaviour and conduct for a period of one year before the learned Chief Judicial Magistrate, Kailashahar and if he does not violate the condition of the bond, he shall be discharged from the liability of the bond. In the event, he violates any condition of the bond, he shall pay a fine of Rs.300/-, in default, S.I. for 15 days. As accused appellant Bhanu is a teacher, he shall be entitled to get the benefit of*

Section 12 of the provisions of the Probation of Offenders Act, 1958 and in other words, this conviction will not go against him in his service career."

3.3. After the period of probation was over, the defendant-appellant No.2 by Memo. dated 07.12.1994 revoked the order of suspension *w.e.f*. 16.12.1994 and the plaintiff-respondent thereafter joined his duties on 17.12.1994. The plaintiff-respondent was under suspension during the period from *04.09.1981* to *16.12.1994*. In the meantime, vide Memo. dated 11.12.1994 the plaintiff was again asked to show cause as to why the period of suspension should not be treated as a period spent on "*non-duty"* and the plaintiff-respondent was asked to submit his reply within ten days from the date of receipt of that notice. The plaintiff-respondent submitted his reply claiming full wages and other service benefits. Defendant-appellant No.2, considering the representation of the plaintiff-respondent vide Memo. dated 20.01.1997 directed that the period of suspension will be treated as "*non-duty".* Memo. dated 20.01.1997, for ready reference, is quoted herein which reads thus:

"No.F.4(1-880)-DSE/81
Government of Tripura
Directorate of School Education
(C&G Section)

Dated, Agartala, the 20th January, 1997

M E M O

Subject:- Information regarding payment of pay and allowance for the suspension period to Shri Bhanu Kumar Chanda, Asstt. teacher.

Consequent upon the order dated 21-9-93 passed by the Hon'ble Gauhati High Court, Agartala Bench in criminal Appeal No.5 of 1984, Shri Bhanu Kumar Chanda, Asstt. teacher, Joynagar(Sanicherra) High School, Dharmanagar, North Tripura was favoured with the order for revocation of suspension order vide this office order of even number dated 7-12-94 without prejudice to the criminal case pending against him. Accordingly, he has resumed his duty on 17-12-94(FN) to the place of posting and subsequently prayed to the authority on 10-9-96 to allow him financial benefit for the period of his suspension commencing from 4-9-81 to 16-12-94.

His prayer dated 10-9-96 has been considered and it has been decided that no benefit for the above period of his suspension can be paid to him except what was paid in the shape of subsistence allowance and the period of suspension will be treated as Non-duty. However, the past services rendered by him before the suspension will not be forfeited and he will get all benefits of past services.

Sd/-

Director of School Education

Tripura."

3.4. The plaintiff-respondent thereafter also submitted representation for reconsideration of the Memo. dated 20.01.1997 but the defendant-appellants refused to consider the same and, hence the plaintiff-respondent issued notice under

Section 80 of CPC on 24.12.1999 and thereafter filed the suit(TS 20 of 2000) on 25.11.2000 before the learned trial Judge(Civil Judge, Jr. Division, Dharmanagar, North Tripura) seeking the following relief(s):

> *"a) a decree for declaration that the plaintiff is entitled to get all service benefit for the suspension period w.e.f 4.9.81 to 16.12.94.*
>
> *b) for a decree for declaration that the plaintiff is entitled to get all other service benefits including the increments like other employees on the basis of service rules and as per fixation of pay on the revised scale under the Tripura State Civil Services(Revised Pay) Rules till the date;*
>
> *c) Cost of the suit;"*

4. The defendant-appellants contested the suit by filing written statement *inter alia* stating that the plaintiff-respondent involved himself in criminal case and, therefore as per law he was placed under suspension. In the criminal case all through he was found guilty and after the period of probation was over his suspension order was revoked and he was reinstated and thereafter the disciplinary authority, i.e. the respondent No.2, after affording all opportunity to the plaintiff-respondent of being heard, issued Memo. dated 20.01.1997 holding that the period of suspension(*04.09.1981 to 16.12.1994*) shall be treated as "*non-duty"*. There was no wrong in the order and the plaintiff-respondent has of no right to claim for the full wages and other

benefits of service while he did not render any service to the authority.

4.1. The learned trial Judge(Civil Judge, Jr. Division) considering the pleadings of the parties framed following issues:

> "*1. Is the suit barred by law of limitation?*
>
> *2. Is the plaintiff entitled to question the orders contained in Memoranda dated 2-01-97, 22-03-97 and 26-08-98 in a Civil Court?*
>
> *3. To what relief, if any, is the plaintiff entitled?"*

4.2. In due course after trial learned Civil Judge, Junior Division decided Issue No.2 against the plaintiff-respondent and, accordingly dismissed the suit.

4.3. Challenging the judgment passed by the trial Court, the plaintiff-respondent preferred Title Appeal No.2 of 2003 in the Court of Addl. District Judge, Dharmanagar, North Tripura and learned Addl. District Judge allowed the appeal and directed that the plaintiff-respondent was entitled to have the pay and allowances in the entire period of suspension and, accordingly directed the defendant-appellants to regularize his service.

4.4. Having felt aggrieved the present second appeal is filed challenging the judgment and order passed by the learned Addl. District Judge.

5. It is submitted by learned Addl. G.A., Mr. Chakraborty that the plaintiff-respondent involved himself in the

criminal case and he was arrested by police on the charges of murder and was kept in custody for more than 48(forty eight) hours for which according to the provision prescribed in *Rule 10(2)(a)* of the *Central Civil Services(Classification, Control and Appeal) Rules, 1965(*for short, *CCS(CCA) Rules of 1965*) he was placed under suspension. The criminal case ended in charge sheet and in trial he was found guilty by the learned Sessions Judge for commission of the offence of murder and, accordingly he was sentenced. He filed an appeal in the High Court and the High Court found him guilty of committing offence punishable under Section 323 of IPC and ultimately released him on probation of good conduct. After he was released on probation the defendant-appellant No.2 vide Memo. dated 07.12.1994 revoked the order of suspension and reinstated the plaintiff-respondent in service. Since the plaintiff-respondent was suspended for his own fault and he did not render any service and was found guilty by the criminal Court, he cannot claim as of right, the back wages and other service benefits for the period he was under such suspension.

5.1. It is contended by learned Addl. G.A., Mr. Chakraborty that it was the absolute discretion of the disciplinary authority to take a decision on that point and the disciplinary authority rightly decided that the plaintiff-respondent was not entitled to get the back wages and other benefits of the period of suspension and further the petitioner did not challenge that order in the appropriate forum and, hence the plaintiff-petitioner

is not entitled to get any relief. Learned Addl. District Judge has made out a third case beyond the pleadings of the parties and deviated from the issues framed by the trial Court and arrived at a wrong decision which is liable to be interfered since the decision is totally perverse.

5.2. In support of his contention learned Addl. G.A., Mr. Chakraborty relied on the decision of the Apex Court in the case of ***Union of India v. Jaipal Singh*** reported in ***AIR 2004 SC 1005.***

6. Countering the submissions of learned Addl. G.A., Mr. Chakraborty, learned counsel, Mr. Biswas has submitted that the plaintiff-respondent was reinstated by the defendant-appellants pursuant to the order passed by the Gauhati High Court, Agartala Bench in Criminal Appeal No.5 of 1984. He was placed under suspension pending criminal proceeding against him. Suspension is not a detachment from service. The petitioner was all along in service but because of the criminal proceeding pending against him he was forced not to render his services and under such circumstances while he was reinstated, he should not have been deprived of from all the service benefits including back wages. Since subsistence allowance was allowed to him he should have been allowed full salary for the period of suspension. No disciplinary proceeding was drawn up against him and he was not found guilty of any disciplinary proceeding whereas, as a measure of punishment, he has been deprived of

back wages and other service benefits, which amounts to a punishment in disguise and, therefore the learned Addl. District Judge has rightly given the directions to the defendant-appellants and this Court may not interfere in the judgment passed by the first appellate Court.

7. Admittedly, the plaintiff-respondent was involved in a criminal case of murder and he was arrested by police and kept in custody for more than forty eight hours and, so as per *Rule 10(2)(a)* of the *1965 Rules* he was placed under suspension *w.e.f.* 04.09.1981. The criminal Court(Sessions Judge, North Tripura, Kailashahar) found him guilty of the charge under Section 302 of IPC and sentenced him accordingly. The appellate Court, i.e. the High Court also in Criminal Appeal No.5 of 1984 did not exonerate him completely from the charge and found him guilty under Section 323 of IPC and in lieu of sentencing him at once put him on probation for a period of two years. After the probation period was over the suspension was revoked by order dated 07.12.1994(*Annexure-2* to the written statement of the defendant-appellants) and the plaintiff-respondent joined his duties on 17.12.1994. The plaintiff-respondent asserted in the plaint that he was given the revised pay scale but the back-wages and increment to which he was entitled during the period of suspension was not given to him.

7.1. It is an undisputed rather admitted fact that after the suspension was revoked the plaintiff-respondent was asked to

show cause as to why the period of suspension should not be treated as '*not on duty'* and he submitted his response. After considering the reply of the plaintiff-respondent defendant-appellant No.2 by Memo. dated 20.01.1997 directed that the period of suspension would be treated as "*non-duty*".

8. The impugned order dated 20.01.1997 has not been challenged in the suit. That order remains untouched being not challenged. While that order passed by the disciplinary/competent authority remains in force, a mere declaration as sought by the plaintiff-respondent in the given facts and circumstances of the suit is/was not tenable at all.

9. The trial Court formulated three issues considering the pleadings of the parties and decided Issue No.2 against the plaintiff-respondent and accordingly dismissed the suit. The first appellant Court i.e. learned Addl. District Judge, as I find, has given goodbye to the pleadings of the parties and made out a case which is practically nobody's case in the suit. Going beyond the pleadings the learned Addl. District Judge has formulated four new points, to be decided, in para 4 of the judgment which reads thus—

> *"A. Whether the appellant is/was a Government servant?*
>
> *B. Whether the Authority of the appellant suspended him from his service invoking the provision of Sub Rule 2(a) of the C.C.A. Rules?*

C. Whether the Authority of the appellant drew any departmental proceeding against him under Rule 14 of the C.C.A. Rules 1965 and if so whether the appellant was found guilty by the Inquiring Authority after holding the enquiry as per the provisions laid down in the said Rules ?

D. Whether the Authority of the appellant inflicted any punishment upon him after getting the enquiry report from the Inquiring Authority after observing all formalities?"

9.1. The above points formulated and decided by the learned Addl. District Judge are nobody's case to the suit. Learned Addl. District Judge has utterly failed to give a finding reversing the finding of the trial Judge and arrived at his own conclusion formulating those new points for decision which is not permissible in law.

9.2. Further on merit, as I find, the limitation point was not correctly decided even by the trial Court. The first appellate Court even did not touch that point. The plaintiff-respondent was reinstated by order dated 07.12.1994 and he joined on 17.12.1994. He was noticed to give his response about his suspension period. Show cause notice was also served on him as to why the period of suspension should not be treated as "*non-duty*". After considering the show cause reply, etc. by impugned Memo. dated 20.01.1997 the authority of the plaintiff-respondent i.e. defendant-appellant No.2 decided that the period of suspension should be treated as "*non-duty*". So the cause of

action for the suit arose on 20.01.1997 and will expire on 19.01.2000. The suit ought to be filed on or before 19.01.2000 as per the provision prescribed in Article 58 of Part III of the Schedule of Limitation Act, 1963.

9.3. The plaintiff-respondent issued notice under Section 80 of the CPC on 24.12.1999, i.e. within a period of limitation, and two months expired on 24.02.2000. The suit was filed on 25.11.2000, i.e. admittedly after the period of limitation. The trial Court arrived at a conclusion that even after passing of order dated 20.01.1997 the plaintiff-respondent made representation seeking review and/or reconsideration of Memo. dated 20.01.1997, and so the period of limitation extended after 20.01.1997.

9.4. Limitation is a time span prescribed by law for taking certain action by an aggrieved party. Limitation cannot be extended by representation or by making prayer of review or reconsideration. Once an action is barred by limitation it is barred forever unless the law prescribes condonation in any other manner. In the present case, as I find neither the plaintiff-respondent challenged order/Memo. dated 20.01.1997 in the suit nor filed the suit within three years from the date of issuance of that Memo. and, therefore the suit was absolutely barred by limitation.

9.5. Secondly, as I find learned trial Court has rightly decided that the plaintiff-respondent had the opportunity of

affording the scope of filing an appeal under *Rule 23(v)(f)* of the *CCS(CCA) Rules, 1965*. Admittedly, after reinstatement show cause notice was issued to the plaintiff-respondent and he submitted his representation claiming back wages and other service benefits during the period of suspension. The appropriate authority rejected the prayer and decided that the plaintiff was not on duty during the period of suspension, i.e. from *04.09.1981 to 16.12.1994*. According to rules, the plaintiff had the opportunity of challenging the same before the appropriate authority but he had chosen not to avail that opportunity. Rule *23(v)(f) of the CCS(CCA) Rules, 1965* reads as follows:

> ***"23(v)(f)*** *determining whether or not the period from the date of his suspension or from the date of his dismissal, removal, compulsory retirement or reduction to a lower service, grade, post, time-scale or pay or stage in a time-scale of pay to the date of his reinstatement or restoration to his service, grade or post shall be treated as a period spent on duty for any purpose."*

9.6. Since the plaintiff-respondent did not avail the opportunity of the above provision learned trial Judge rightly decided Issue No.2 against the plaintiff and rightly dismissed the suit.

10. Regarding back wages, as I find the plaintiff-respondent cannot claim it as of right. He involved himself in the criminal case and he was arrested by police and was detained on the charge of murder and, therefore as per provision of *Rule*

10(2)(a) of the Rules of 1965 he was placed under suspension *w.e.f.* 04.09.1981. It was a statutory action taken by the appropriate disciplinary authority. The plaintiff-respondent was reinstated by the authority taking into consideration the judgment passed by the High Court in the criminal appeal. He cannot claim back wages as of right since the department was in no way concerned with the criminal case instituted against him and, therefore the department cannot be saddled with liability for the back wages of the period the plaintiff-respondent was under suspension. It was not a case that the plaintiff-respondent was unnecessarily involved in the disciplinary proceeding by the authority. Because of the criminal case, contributed by the plaintiff himself, he cannot blame the others. He was not exonerated from the charges of the criminal offence. He was found guilty but was simply not punished at once to suffer imprisonment and fine but was put on probation. Under such circumstances, the plaintiff has nothing *bona fide* to claim as of right the back wages and other benefits for the period of suspension.

11. The case of ***Jaipal Singh***(*supra*) stands almost on similar fact. In that case, the Supreme Court has observed—

> "…….*If as a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial Court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges, a person*

convicted of an offence to be so kept out and not to be retained in service. ……The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, committed a grave error, in allowing backwages also, without adverting to all such relevant aspects and considerations."

12. Had the plaintiff-respondent been honourably acquitted by the trial Court or the appellate Court, he would lay his demands *bona fide* for back wages and other benefits. In case of an honourable acquittal back wages are permitted but there is no instance to show that back wages and other service benefits are given to an employee who has been found guilty by the criminal Court.

13. Reinstatement itself does not *ipso facto* entitle an employee to the back wages and other service benefits.

In the case of ***State of U.P. v. Ranjit Singh*** reported in ***(1999) 2 SCC 617***, while adjudicating upon a revisional application the High Court allowed the revisional application and directed the disciplinary authority to treat the accused petitioner in continuous service and to pay his full pay and D.A., etc. The Supreme Court criticized the order and in para 5 of the judgment in ***Ranjit Singh*** *(supra)* held thus:

*"**5**. We also fail to understand how the High Court while deciding a criminal revision can direct that the accused must be deemed to have been in continuous*

service without break and, therefore, he should be paid his full pay and DA during the period of his suspension. This direction and observation is wholly without jurisdiction and we, accordingly quash the said direction contained in the impugned judgment of the High Court. This appeal is accordingly allowed".

14. The defendant-appellant No.2, the Director of School Education is the disciplinary authority of the plaintiff-respondent. He has taken the decision observing the legal formalities. The decision of the learned Addl. District Judge was absolutely wrong in holding that the Director should not have taken the decision that the plaintiff should be treated as *'not on duty'* during the period of suspension. No further disciplinary proceeding was necessary since the plaintiff-respondent was found guilty by the criminal Court. The plaintiff-respondent was/is in no way entitled to claim the back wages and other service benefits in the given facts and circumstances of the case.

15. Accordingly, the second appeal is allowed. The judgment and order passed by the first appellate Court(Addl. District Judge) dated 28.02.2003 in Title Appeal No.2 of 2003 is set aside and quashed. The judgment and order passed by the trial Court dated 13.11.2002 in Title Suit No.20 of 2000 is restored and upheld.

16. Send back the L.C. record along with a copy of the judgment.

JUDGE